

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FCS ADVISORS, LLC,

Plaintiff,

—against—

21 Civ. 6995 (PKC)

THEIA GROUP, INC., d/b/a “THORIAN
GROUP” and/or “CYPHERIAN”; THEIA
AVIATION, LLC; and THEIA HOLDINGS
A, INC., d/b/a “THORIAN HOLDINGS,”

Defendants.

DECLARATION OF ERLEND OLSON, FOUNDER OF THEIA GROUP, INC.

I, Erlend Olson, declare as follows:

1. I am the founder, as well as former board member, Chief Operating Officer, and Chief Executive Officer of Theia Group, Inc. (“TGI”, and collectively with Theia Holdings A, Inc. (“Theia Holdings”) and Theia Aviation, LLC, the “Receivership Entities” or the “Company”).¹

2. I submit this declaration (this “Declaration”) in further support of the *Receiver’s Memorandum of Law in Response to Stephen Buscher’s Limited Objection and Reservation of Rights to the Expedited Motion of Receiver for an Order Further Extending the Stay Provided in the Receivership Order* (the “Response”), which is being filed contemporaneously herewith.

GENERAL BACKGROUND

3. I formed TGI in September 2015 for the purpose of creating a digital model of the earth so that modern digital tools and processing methods could be brought to bear on helping physical industries and sovereign nations solve physical world problems, such as increasing

¹ Capitalized terms not otherwise defined in this Declaration shall have the meanings ascribed to such terms in the Stay Extension Motion or the Response, as the context requires.

agriculture efficiency, monitoring road and pipelines and infrastructure for problems, and securing national borders, among many other things.

4. I served as Chief Operating Officer of TGI until January 22, 2021, when I replaced Stephen O'Neill as Chief Executive Officer. I served as Chief Executive Officer until my resignation on May 19, 2021.

5. I have a significant interest as a creditor of the Receivership Entities because, among other things, I am a guarantor of the debt owed to FCS Advisors, LLC.

6. As the Founder and Chief Executive Officer of TGI, I was involved in opposing the appointment of a receiver for the Receivership Entities.

7. However, on November 8, 2021, the Court appointed Michael Fuqua as receiver for the Receivership Entities (the "Receiver").

8. Since his appointment, the Receiver (with the assistance of numerous technical and legal advisors) has been managing the Receivership Entities' assets and engaging with professionals to complete the process for the sale of the Receivership Entities' assets, including the FCC Licenses and the NOAA License, together with extensive intellectual property and other remote sensing aircraft and sensor assets (the "Receivership Assets").

9. I understand that the Receivership Order provides for a stay of all litigation against the Receivership Entities (the "Receivership Stay"), which has been extended through and including April 20, 2023.

10. Although I was involved in opposing the appointment of the Receiver originally, I am now strongly in favor extending the Receivership Stay through June 30, 2023. I believe that the Receiver and his advisors are maximizing the value of the Receivership Assets.

MR. BUSCHER'S ULTERIOR MOTIVES REGARDING THEIA

11. In late 2020 and throughout the spring of 2021, I (and others) began to suspect that Mr. Buscher had ulterior motives and was working for another party who wished to destroy the Company, or at least certainly its remote sensing business sector, with Mr. Buscher and the other party then taking control of the FCC Licenses.

12. Of the many duplicitous acts during his tenure as CFO to devalue Theia (which have since become well documented), Mr. Buscher also organized an improperly noticed “emergency” Board meeting originally set for June 11, 2021, which was then rescheduled for June 14, 2021. Following the June 14, 2021 Board meeting, Messrs. Gallagher and Sullivan, Sr. and I were the sole remaining members of the Board. The Board recognized that Mr. Buscher had choreographed, and had attempted to execute, a “boardroom coup” to force the Company into bankruptcy well before the Company was in default with its major creditor. His plan included a scheme whereby he would directly take control of the Company’s assets.

13. Mr. Buscher was unreachable for several weeks following the June 14, 2021 Board meeting. Considering Mr. Buscher’s failure to discharge any normal duties as CFO, his attempts to devalue TGI, and his attempt to effectuate a self-enriching coup, the TGI board designated J. Reid Gorman (“Mr. Gorman”) as *interim* CFO of the Company.

14. Following Mr. Buscher’s formal resignation on August 8, 2021, the Board then appointed Mr. Gorman as “the permanent CFO” on August 25, 2021.

MR. BUSCHER'S SELF-DEALING SCHEME

15. Mr. Buscher repeatedly proposed that he resign as CFO of TGI but continue serving as CFO of “Cypherian”—even though it was merely a “d/b/a” for TGI’s subsidiary, Theia Holdings (which holds the FCC and NOAA licenses), and not a legally separate entity.

I questioned Mr. Buscher's plan to resign as CFO for TGI while continuing on as CFO for Cypherian because Cypherian was really just a "d/b/a" of Theia Holdings.

16. Mr. Buscher's scheme to steal the Company's intellectual property embodied in the Cypherian concept was laid bare in a conversation with Mr. Buscher recorded on July 6, 2021 from the Company's offices in New Mexico. In that conversation, and in derogation of the terms of his Amended Consulting Agreement (*e.g.*, §§ 5.1-5.3 and 6.1), Mr. Buscher stated and threatened:

I'll bet you anything the Cypherian concept will live on. . . . Somehow with the spectrum. So I'm just sitting here trying to figure out how can I stay attached to that because there's a part of me that's saying hey Cypherian was not really [TGI's] intellectual property anyway. It was mine. I've got Cypherian LLC Delaware corporation [sic] as well as Cypherian C Corp Delaware both incorporated with the Delaware registrar by me. And we're all over the market. So, this is something where I don't know that we're in the same [inaudible] . . . But, we're all adults. We all make our own decisions. . . . It doesn't mean like I'm going to hand Rob Leeds Cypherian without a fight. [They] only have 255 million bucks out, they don't have a lien on everything up to an infinite amount. So fuck them. Fuck them. Yeah you want your money back? Why don't you go to a judge? Go to a fucking judge because the Cypherian concept is mine. It's not in your license you think you're going to foreclose on. There's no mention of it. Another company exists. . . . I'll say fine, that's fine, and you know what, the moment I see any variant of your group pop up with a concept that looks like Cypherian, I will sue you until the last fucking day on earth. So what do you want? Here's the bottom line, if they just take those licenses they're not getting shit.

See July 6, 2021 Taped Conversation at 20:43-22:53 (emphasis added).

17. As his statements in the taped July 6, 2021 conversation demonstrate, Mr. Buscher had not only surreptitiously created two entities (Cypherian LLC and Cypherian Inc.) with names similar to the TGI subsidiary that actually held the FCC and NOAA licenses (*i.e.*, Theia Holdings d/b/a Cypherian), he also had no intention of transferring control of his self-created Cypherian entities to TGI. Instead, and as further demonstrated below by Mr. Buscher's own words, Mr. Buscher was intent on owning or controlling TGI's Cypherian concept and flipping the FCC

Licenses into it, and/or if that did not work, then subsequently destroying the Company and its licenses to the detriment of the Receivership Entities' creditors.

18. In late July 2021 (unaware that his true intentions already were known and previously recorded), Mr. Buscher tried to cajole me to keep him involved with the Cypherian concept. Specifically, in a conversation taped on July 27, 2021, Mr. Buscher inquired whether I saw him as “part of that” (*i.e.*, Cypherian) going forward, and expressed his desire to take Cypherian public through a de-SPAC. *See* July 27, 2021 Taped Conversation at 1:14-1:16 and 31:01-31:05.

19. In support of his plea for continued involvement with the Receivership Entities, Mr. Buscher told me that he (i) “doesn’t know of any wrongdoing” (*id.* at 13:46-49); (ii) “likes” me and considers me “one of his closest friends”, and would help “clear [him]self” “in any way” (*id.* at 14:50-15:03); (iii) “respects” me unbelievably (*id.* at 22:31-22:34); (iv) would help me “anyway [he] can” (23:13-23:15); (v) “[so we] can make Cypherian happen,” which will “more than pay[...] everyone back” at which time “everyone will love [Olson]” (*id.* at 24:09-18); (vi) asked me, “off the record,” what he [Buscher] can do “most helpful” to me (*id.* at 28:25-28:30); and (vii) indicated that he did “not trust” the Department of Justice because it was “very political” (*id.* at 30:10-30:19).

20. Unrelenting, in yet another taped conversation with me on August 7, 2021—one day prior to his resignation as CFO of the Company—Mr. Buscher continued to press for control of “Cypherian,” advising me that he wanted to resign as CFO of the Company but remain on in that capacity for Cypherian. However, I rightly observed to him that he made no sense because Cypherian was of course simply a “d/b/a” for Theia Holdings, and actually part of TGI. *See* Aug. 7, 2021 Recorded Conversation at 7:29-8:4 and 24:52-26:30.

21. In yet another conversation with me (which I taped on September 30, 2021), Mr. Buscher once again reiterated his desire to stay on as CFO of Cypherian. *See* Sept. 30, 2021 Recorded Conversation at 6:45-7:20.

22. Unsuccessful in his other attempts to take control of Cypherian and control the assets of the Company, and nearly two months after his resignation as CFO of the Company, on September 30, 2021, Mr. Buscher changed his tactics, turning up the pressure by threatening to testify against me and/or the Receivership Entities if his claims for compensation under the Amended Consulting Agreement were not resolved. Specifically, Mr. Buscher warned me that, **“I think we should just settle and, uh, to be really blunt, before I have to testify[.]”** *See* Sept. 30, 2021 Recorded Conversation at 2:40-2:45. There was no question in my mind given his words and his tone that Mr. Buscher was threatening me.

23. Mr. Buscher’s threat on September 30, 2021 was not the only one I received from him. On May 6, 2022, after the Receiver’s counsel filed a *Letter in Response to the Pre-Motion Letter Regarding Motion of Stephen Buscher for Relief from the Receivership Stay* (Doc. 236), in a text sent to an individual with whom I have an attorney-client relationship, Mr. Buscher wrote:

“. . . you do know that framing or slandering me will draw extra criminal charges. . . ”

It was clear to me and the individual who received that text that it was intended to further threaten me to “keep quiet” and avoid telling the actual facts of Mr. Buscher’s duplicitous behavior in response to his Stay Relief Motion. *See* Exhibit 1 to Hickey Declaration filed contemporaneously herewith.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 26, 2023

By: /s/ Erlend Olson
Erlend Olson

